REGULATION AND LIMITATION OF THE RIGHT TO VOTE.—In all representative systems the elective franchise has been considered merely a means for promoting the good of the state[1] and for effectually securing the so-called natural rights such as those to life and liberty,[2] the creation and preservation of which is the ultimate end of government.[3] Since it is not in itself one of those rights,[4] the franchise has always been held subject to regulation and limitation by the conventional power,[5] and in this country the theory of the Federal Constitution seems to bear out this conception of its nature as altogether conventional and derivative.[6] It is true that the National Legislature has been given power to regulate congressional elections, and its regulations are paramount,[7] for the right to vote at such elections depends primarily on the Constitution of the United States rather than on the laws of the States.[8] The only source of Federal control over purely State elections, on the other hand, is the Fifteenth Amendment,[9] which forbids the enactment by Congress or the States of any law depriving a citizen of his right to vote by reason of "race, color, or previous condition of servitude."[10] It is to be observed that while this amendment gives exemption from all discrimination on the grounds specified, it does not restrict the operation of general laws, nor confer suffrage upon any one.[11] Subject, then, to these limitations, it would seem that the States, since they are held to have reserved to themselves all authority not clearly granted to the general government, must in their sovereign capacity have plenary power over the elective franchise,[12] and instances of the exercise of this power are to be found in all the State constitutions.[13] When qualifications for the voter are therein prescribed they are held to be exclusive, and are not subject to be restricted, extended or altered by the Legislature,[14] which, however, is not precluded from enacting laws to secure the proper exercise of the franchise and to preserve it inviolate.[15] These laws must of course

[1]Gougar *v.* Timberlake (1897) 148 Ind. 38.

[2]See Corfield *v.* Coryell (1823) 4 Wash. C. C. R. 371.

[3]Friezleben *v.* Shallcross (Del. 1890) 9 Houst. 1; State *v.* Black (1892) 54 N. J. L. 446.

[4]Friezleben *v.* Shallcross *supra;* State *v.* Black *supra;* Anderson *v.* Baker (1865) 23 Md. 551, 579; Blair *v.* Ridgely (1867) 41 Mo. 63.

[5]Spencer *v.* Board of Registration (D. C. 1873) 1 MacArthur 769.

[6]Anderson *v.* Baker *supra.*

[7]*In re* Massey (1890) 45 Fed. 629; United States *v.* Quinn (1870) 8 Blatchf. 48.

[8]*Ex parte* Yarborough (1864) 110 U. S. 651; Wylie *v.* Sinkler (1900) 179 U. S. 58.

[9]Lackey *v.* United States (1901) 107 Fed. 114.

[10]United States Constitution, Amendment Fifteen.

[11]United States *v.* Cruikshank (1875) 92 U. S. 542; Spencer *v.* Board of Registration *supra.*

[12]Anderson *v.* Baker *supra;* Blair *v.* Ridgely *supra;* Madison, "Federalist" No. 54; 1 Story, Constitution §§ 577-584; Minor *v.* Happerstett (1874) 88 U. S. 162.

[13]Bancroft, History of the American Revolution, Chapter V; Minor *v.* Happerstett *supra.*

[14]Cooley, Constitutional Limitations 901; Pearson *v.* Supervisors (1895) 91 Va. 322; Morrison *v.* Springer (1863) 15 Ia. 304.

[15]Pearson *v.* Supervisors *supra.*

be reasonable and impartial, and such as do not tend to deny or abridge the suffrage, nor unnecessarily to impede its exercise.[16] In accordance with this principle, registration laws have been very generally held valid,[17] on the ground that they are regulations merely, which do not prescribe any new or different qualifications beyond those fixed in the constitution, and which are indispensable to the purity of elections.

The right of suffrage carries with it necessarily the right to make the vote effective, and to cast it on equal terms with every other voter. Just so far, therefore, as the full efficiency of the individual vote depends on party organization, party organization is a constitutional right,[18] though it is otherwise as to mere political fealty,[19] and similarly, wherever a nomination is legally or practically a condition precedent to an election there is a right to share in the selection of candidates.[20] With the introduction of the Australian ballot system, the extent of the legislative power to control parties and nominations as distinguished from the individual franchise, became an important question. The practical considerations calling for such regulation are to be found in the necessity for restricting the ballot to a workable size, and for this purpose laws were everywhere passed limiting the number of candidates by providing substantially that a political party failing at a primary to poll a specified percentage of the total vote at the last preceding general election, should not have the names of its candidates on the ballot in a party column, but only in the list of independent nominations.[21] These statutes, which it should be noted do not directly affect the right to cast the individual ballot, though contested as instances of unwarrantable discrimination between political parties, have nevertheless been sustained under the police power as regulations essential to the practical operation of the Australian ballot, in spite of the desirability under the new system of furthering and preserving party policies. In a recent case, *State ex rel. McGrael* v. *Phelps* (Wis. 1910) 128 N. W. 1041, the court was called upon to determine the constitutionality of a statute somewhat similar to those last mentioned. It was therein provided that a political party all of whose candidates in the aggregate should fail at a primary election to poll for any given official district or division, twenty per cent. of the vote cast by such party for governor in such district or division at the last preceding general election, should have the names of its candidates upon the ballot only in the column of independent nominations. Although in view of the foregoing, exception must be taken to the court's contention that the right to vote, protected as it is by the State constitution, is furthermore a natural or inherent right, nevertheless the result of the decision in sustaining the statute under the police power as a valid regulation of the size of the ballot seems clearly correct, however unwise the policy of the law.

[16]Cooley, Constitutional Limitations 907.

[17]Capen *v.* Foster (Mass. 1832) 12 Pick. 485; Cooley, Constitutional Limitations 902; see also Pope *v.* Williams (1903) 193 U. S. 621.

[18]Britton *v.* Commissioners (1900) 129 Cal. 337.

[19]Todd *v.* Commissioners (1895) 104 Mich. 474.

[20]Healey *v.* Wipf (1908) 22 S. D. 343.

[21]DeWalt *v.* Bartley (1892) 146 Pa. St. 529; State *v.* Michel (1908) 121 La. 374; State *v.* Black *supra.*